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Nos. 87-1632 and 87-1686

In the Supreme Court of the United States

OCTOBER TERM, 1987

YONKERS BOARD OF EDUCATION, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

CITY OF YONKERS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner Yonkers Board of Education may be held liable for causing the segregation of its school system on the basis of factual findings that the Board intentionally engaged in discriminatory acts and omissions and that it consistently rejected desegregative proposals because of the community's race-based opposition to such proposals.

2. Whether petitioner City of Yonkers may be held liable for causing the segregation of its school system on the basis of factual findings that city officials intentionally discriminated against minorities in choosing sites for public and subsidized housing, in part to prevent minorities from attending schools in white neighborhoods; appointed to the school board individuals who would support a policy of avoiding desegregation; and tried to influence school board decisions in order to maintain the status quo.

3. Whether petitioner City of Yonkers may be held liable for engaging in a pattern and practice of racial discrimination in the selection of sites for public and subsidized housing, in violation of the Equal Protection Clause of the Fourteenth Amendment and the Fair Housing Act, 42 U.S.C. 3601 *et seq.*, on the basis of, inter alia, factual findings that city officials consistently yielded to the community's race-based opposition to the development of such housing in white neighborhoods.

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In the Supreme Court of the United States

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No. 87-1632

YONKERS BOARD OF EDUCATION, PETITIONER

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UNITED STATES OF AMERICA, ET AL.

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ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 577a-716a) is reported at 837 F.2d 1181.[1] The opinion of the district court (Pet. App. 1a-532a) is reported at 624 F. Supp. 1276. The district court's order for desegregation of the Yonkers public school system (Pet. App. 533a-561a) is reported at 635 F. Supp. 1538. The district court's housing remedy order (Pet. App. 562a-576a) is reported at 635 F. Supp. 1577. The district court's supplemental order re-

[1] "Pet. App." refers to the appendix to the petition in No. 87-1632, unless otherwise indicated.

lating to the funding of the school remedy plan (87-1686 Pet. App. 763a-767a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 28, 1987. The petition for a writ of certiorari in No. 87-1632 was filed on March 26, 1988. On March 16, 1988, Justice Marshall extended the time for filing the petition for a writ of certiorari in No. 87-1686 to and including April 25, 1988. That petition was filed on April 12, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On December 1, 1980, the United States filed its complaint in the United States District Court for the Southern District of New York against petitioners Yonkers Board of Education (Board) and City of Yonkers and Yonkers Community Development Agency (City) (Pet. App. 8a n.1). The complaint alleged that the Board and the City had engaged in intentional racially discriminatory acts and omissions that caused, in substantial part, the segregated condition of the Yonkers public schools, in violation of Titles IV and VI of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6 and 2000d, and the Fourteenth Amendment (Pet. App. 188a-190a). The complaint further alleged that the City had engaged in a pattern and practice of confining public and subsidized housing to areas of Yonkers west of the Saw Mill River Parkway because of the race or color of the potential occupants, in violation of Title VIII of the Civil Rights Act of 1968 (Fair

Housing Act), 42 U.S.C. 3601 *et seq.*, and the Fourteenth Amendment (Pet. App. 14a-16a).[2]

Yonkers is one of the five largest cities in the State of New York (Pet. App. 11a). An "extreme degree of segregation * * * exists in Yonkers" (*id.* at 14a n.8). According to the 1980 census figures, the City's population of 195,331 was 18.8% minority; 80.7% of the minority population was concentrated in the City's southwest quadrant, which had a 40.4% minority population (*id.* at 11a, 13a). In contrast, only two census tracts outside Southwest Yonkers had a greater than 6% minority population (*id.* at 13a).[3] As of 1982, the southwest quadrant contained 36 of the City's 38 subsidized housing projects, roughly 97% of the housing units (*id.* at 12a-13a, 586a). During the 1960s and 1970s, when most of those projects were built, the City's minority population increased by 325%; 94% of that increase occurred in the Southwest and an adjacent census tract. Indeed, during this time the Southwest lost nearly half its white population. *Id.* at 164a-165a.

The Yonkers Board of Education, consisting of nine members appointed by the Mayor, operated a school system which, in 1980-1981, had 23 elementary schools, two combined elementary/middle schools, four middle

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[2] On March 1, 1981, the Yonkers Branch of the National Association for the Advancement of Colored People and an individual minority student, by her next friend, moved to intervene in the action as parties-plaintiff. On June 29, 1981, the district court granted leave to intervene and later certified the action as a class action on behalf of all black residents of Yonkers who were residents of, or eligible to reside in, public or subsidized housing in Yonkers, or who were parents of students attending public school in Yonkers. Pet. App. 8a n.1, 583a.

[3] The term "minority," as defined in the complaints and census data since 1970, included blacks and hispanics (Pet. App. 13a n.6, 683a).

schools, and five high schools (Pet. App. 198a-200a). The "racially segregated nature of the Yonkers public schools [was] systemwide" (*id.* at 202a). In 1980-1981, for example, 19 out of 25 elementary schools were over 80% white or over 80% minority, although the school system as a whole was 37% minority (*id.* at 204a).[4] The secondary schools also were segregated (*id.* at 205a).[5] Other indications of the segregated school system included racially identifiable faculty and staff assignments, generally less desirable physical facilities in minority schools, and the community's and school officials' perceptions of schools as either minority or white (*id.* at 205a-207a).

2. After more than 90 days of trial in 1983 and 1984, the district court issued an opinion on November 20, 1985, holding the City and the Board liable for the systemwide racial segregation of the Yonkers public schools and the City liable for a pattern and practice of racial discrimination in the selection of sites for public and subsidized housing (Pet. App. 1a-532a). On May 13, 1986, the court entered an order adopting a remedial plan for the desegregation of the Yonkers public schools (*id.* at

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[4] Nearly one-half of all minority elementary students attended five schools in Southwest and West Yonkers which were over 80% minority (Pet. App. 203a-204a). Over 70% of the white elementary students attended schools that were at least 90% white (*id.* at 204a-205a).

[5] The two East Yonkers middle schools enrolled between them only 5% of the school district's middle school minority students; the three middle schools in the Southwest, however, enrolled 79% of the district's middle school minority students (Pet. App. 205a). The remaining middle school in Northwest Yonkers had a 37% minority enrollment (*ibid.*). On the high school level, only 8% of the minority students attended the two East Yonkers high schools. The two West Yonkers schools enrolled 92% of the minority high school students (*ibid.*).

533a-561a); on May 28, 1986, the court entered a remedial housing order against the City (*id.* at 562a-576a).[6]

a. The district court's holding that the Board was liable for the segregated school system was supported by extensive factual findings. First, the court found a number of "[i]ndividual, deliberately segregative school opening, closing and attendance zone decisions" (Pet. App. 485a). "The consistent impact of these decisions * * * was to avoid the assignment either of Northwest Yonkers white students to disproportionately minority schools or of minority students to disproportionately white Northwest Yonkers schools" (*ibid.*). Second, the court found four areas in which the Board had engaged in "unlawfully discriminatory acts and omissions, all of which have had systemwide impact and have served to perpetuate racial segregation in public schools and discriminatory attitudes in the Yonkers community" (*id.* at 486a). These included the Board's refusal, because of racial considerations, to adopt educational reorganization plans that would have equalized educational opportunities in minority and white schools and would have had desegregative consequences (*id.* at 489a-505a). The remaining three areas of discrimination involved the assignment of faculty and administrative staff, the vocational education program, and the Special Education program (*id.* at 486a-488a).

b. The district court also made extensive factual findings in holding the City liable for the segregated school system. The court cited, among other things, city officials' intentionally segregative housing practices that it found

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[6] The latter order included supplemental findings that the City's pattern and practice of discrimination had continued in light of the City's refusal to submit a housing assistance plan and designate sites for subsidized housing in East Yonkers, as required by a contract for federal financial assistance (87-1686 Pet. App. 758a-759a).

were motivated, in part, by a desire to prevent minorities from attending schools in white neighborhoods; a pattern of mayoral appointments to the school board of individuals who would support a policy of avoiding desegregation; and city officials' attempts to influence school board decisions in order to maintain the status quo (Pet. App. 433a-438a, 456a-458a, 465a-467a). The court found that the Board and the City worked together to maintain the segregation of the Yonkers public schools in a manner that rendered the statutory legal separation between them "an artificial and constitutionally insignificant one" (*id.* at 500a).

c. The district court also held the City liable for engaging in a pattern and practice of racial discrimination in the selection of sites for public and subsidized housing. The court found a "remarkably consistent and extreme" pattern of rejecting integrative courses of action in favor of segregative alternatives and held that this pattern was unlikely to have occurred in the absence of racial motivation (Pet. App. 173a). In addition, the court found direct and circumstantial evidence of city officials' segregative intent. This evidence included the acquiescence in the community's racially influenced opposition to public and subsidized housing outside areas of minority concentration (*id.* at 173a-174a), the total absence of low-income family projects outside largely minority areas (*id.* at 163a), the inconsistent application of procedural rules depending upon whether the proposed housing site was east or west of the Saw Mill River Parkway (*id.* at 102a-106a), the frequent rejection of Planning Board recommendations that were inconsistent with a policy of segregation (*id.* at 48a), the creation of an atmosphere hostile to private development of low-income housing outside the Southwest (*id.* at 95a), and the reluctance to seek federal Section 8 housing certificates and, when they were obtained, the confining of

their use to minority families only in the Southwest (*id.* at 118a-130a).

3. Both the Board and the City appealed. In a lengthy opinion, the court of appeals affirmed "in all respects," concluding that the district court "properly applied the appropriate legal principles, that its findings of fact [were] not clearly erroneous, and that its remedial orders [were] within the proper bounds of discretion" (Pet. App. 583a).

ARGUMENT

As they have throughout this litigation, the Board and the City blame each other for the segregated Yonkers public school system. Each petitioner thus contends principally that the courts below erred in holding it liable for the discriminatory acts of the other. This fingerpointing, however, should not divert this Court's attention from the record, which contains substantial evidence of cooperative, intentionally segregative actions by both the Board and the City.[7] The district court, for instance, found that

> [w]hile a city's legal responsibility for the perpetuation of segregated schools cannot appropriately rest

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[7] The district court found that the "interrelationship between the City and the Board, and its effect on housing and school segregation, is illustrated with unmistakable clarity by the treatment accorded School 4" (Pet. App. 468a). Although the school, which the Board closed in 1976, should have been returned to the City for disposition, the Board cooperated with the City to prevent the site from being used for low-income housing by retaining control of the vacant school at an annual cost of $40,000 to $50,000 (*id.* at 468a-472a). Shortly after the City informed the Board that a developer was interested in the site for " 'luxury-type housing,' " the Board returned School 4 to the City (*id.* at 473a-474a). The actions of the Board and the City concerning School 4 provided a striking example of a "[d]eparture[] from the normal procedural sequence" which this Court has found to be a significant factor in proving circumstantially the existence of unlawful

> simply upon the imposition of vicarious liability for the independent acts and omissions of school officials who are responsible for and capable of changing this condition, to view the conduct of the Yonkers Board of Education independently of the circumstances and manner in which its members were selected would be to artificially separate city powers, policies and practices from educational affairs in a manner wholly inconsistent with the reality of public education in Yonkers.

Pet. App. 517a.[8] The court of appeals shared this assessment, commenting that "[w]hen two actors have cooperated in a given venture, each contributing to the outcome that each desires, it requires no stretch of legal doctrine to conclude that each actor is liable if the result deliberately attained is unlawful" (*id.* at 702a). The courts below agreed that the Board and the City had mounted "an interrelated governmental effort to preserve the integrity of 'neighborhood schools' whose racial segregation was governmentally sanctioned and steadfastly maintained" (*id.* at 500a, 704a), and thus held each petitioner liable for its own intentionally segregative contributions to the constitutional violation.

The decisions below are correct. They do not conflict with any decision of this Court or of any other court of appeals. Accordingly, review by this Court is not warranted.

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discriminatory intent. *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 267 (1977).

[8] The court found that the City had exercised a "subtle, yet significant, segregative influence over educational affairs" (Pet. App. 518a). A former mayor of Yonkers stated that the City and Board worked together on educational matters as "one family" (Tr. 1251-1252).

1. The Board contends that the courts below improperly relied on the City's intentionally segregative housing practices rather than the Board's own actions (87-1632 Pet. 8-17), and on the Board's mere failure to eliminate disparities among its schools (*id.* at 17-20), in holding the Board liable for the segregation of the Yonkers public schools. The Board's claim is meritless. The courts below held the Board liable for causing the segregation of its school system on the basis of factual findings that the Board itself intentionally engaged in discriminatory acts and omissions and consistently rejected desegregative proposals in order to avoid the community's race-based opposition to such plans.

a. The Board is simply wrong to claim that its liability hinged on the City's segregative conduct rather than its own. As the court of appeals made clear, the district court had not (Pet. App. 702a-703a)

> impose[d] liability on the Board for segregation in housing [nor found] the Board liable for school segregation solely because the City was liable for intentionally preserving segregation in housing. Rather the court found many indicia of segregative intent on the part of the Board independent of any goal or view attributable to the City, and found the City's intent relevant, in major part, to an assessment of the Board's motivation in repeatedly refusing to take any desegregative steps.

The Board's adherence to a neighborhood school policy, which exacerbated the segregative effects of the City's intentionally discriminatory housing practices, was "hardly the only premise of the Board's liability" (Pet. App. 687a). Instead, evidence of the Board's selective adherence to that policy, "the consistent element being that deviations [from and] manipulations [of the policy] tended to increase the

racial imbalance in the schools" (*id.* at 689a), supported the finding of the Board's segregative intent. Such evidence included "segregation-enhancing school zone realignments" (*id.* at 686a), "race-based placement of minorities in special classes [outside of their neighborhood schools] and prejudice-enhancing treatment of those classes" (*ibid.*), and "systematic exclusion of minorities from vocational programs" (*ibid.*).

The Board's use of "race-based staff assignments" (Pet. App. 686a), a practice which this Court has recognized as "strong evidence" of intent to segregate students,[9] was yet further support for holding the Board liable where these staff assignments "enhanced the racial identifiability of most schools" (*id.* at 691a). Moreover, the Board's practices regarding staff assignments showed that many of the Board's "proffered rationales [for its policies] were pretextual" (*id.* at 693a-694a).

Finally, the record supported the conclusion that the Board's "desire to perpetuate school segregation was a motivating factor in [its] refusals to take any step that would have had a desegregative effect" (Pet. App. 697a). The courts below quite properly inferred the Board's intent to preserve segregated schools from the fact that the Board "consistently rejected, often stating reasons that were pretextual, any significantly desegregative alternative [to the neighborhood school policy] proposed to it" (*id.* at 689a).

Under the circumstances, the Board's renewed contention that the district court improperly held the Board liable for the City's discriminatory housing practices remains as "superficial and untenable" (Pet. App. 687a) as it

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[9] *Dayton Bd. of Educ.* v. *Brinkman*, 443 U.S. 526, 539 (1979); *Columbus Bd. of Educ.* v. *Penick*, 443 U.S. 449, 467 (1979); *Green* v. *County School Bd.*, 391 U.S. 430, 435 (1968).

was when raised before the court of appeals. The Board ignores the extensive factual findings outlined above which highlight the "many indicia of segregative intent on the part of the Board independent of any goal or view attributable to the City" (*id.* at 702a).[10]

b. The Board is similarly wrong in claiming that its liability depended on the finding that it failed to eliminate educational disparities among its schools. The factual findings outlined above, including the Board's selective adherence to the neighborhood school policy, the Board's race-based decisions on school openings and closings, and the Board's race-based faculty and administrative staff assignments, show that the Board's liability hinged on deliberately segregative actions apart from the Board's failure to upgrade the quality of its minority schools.

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[10] For this reason, the conflict the Board cites between the court of appeals' decision and decisions of the Fourth and Sixth Circuits is illusory (87-1632 Pet. 13-17). Each of the latter decisions either assumed or involved a school board that had no segregative intent or had taken no segregative actions. See, *e.g.*, *Goldsboro City Bd. of Educ.* v. *Wayne County Bd. of Educ.*, 745 F.2d 324, 331-333 n.15 (4th Cir. 1984) ("There is no evidence in the record that would support a finding that public housing was constructed in the City school district in order to concentrate black children in the City school system."); *Bell* v. *Board of Educ.*, 683 F.2d 963, 968 (6th Cir. 1982) (footnote omitted; emphasis added) ("We do not find any case addressing the argument that a school board *otherwise innocent of segregative intent* is liable for the discriminatory housing practices of other governmental agencies."); *Higgins* v. *Board of Educ.*, 508 F.2d 779, 788 (6th Cir. 1974) ("There is no indication that the school officials had any complicity in [the claimed] segregative acts."). In the present case, by contrast, the Board committed acts of intentional discrimination that caused the racial segregation of its school system. The Board blinks reality in suggesting that this case involves an imposition of vicarious liability.

To be sure, the courts below also concluded that the Board, although not responsible for causing the problem, tolerated educational disparities among its schools whose "existence * * * clearly worked to the disadvantage of minority students" (Pet. App. 492a; see *id.* at 292a-320a, 616a-617a, 686a-694a). The Board consistently rejected meritorious proposals designed to improve the quality of minority schools, not because of educational or fiscal reasons, but because of the community's opposition to desegregation (*id.* at 505a-506a, 694a-698a). Accordingly, the Board's consistent refusal to adopt any desegregative measures, "in the context of the totality of all of its actions and omissions" (*id.* at 505a), also contributed to the Board's liability for the segregation of the school system. The Board is simply mistaken in suggesting that a mere failure to remedy educational disparities was the touchstone of its liability.

c. The Board also renews its contention (87-1632 Pet. 21-24) that blacks and hispanics should not have been grouped together in considering whether the school system was racially segregated. In *Keyes* v. *School Dist. No. 1*, 413 U.S. 189, 196-198 (1973), this Court made clear that blacks and hispanics should be considered as one group, in the context of a claim of segregation, where the evidence showed that the school board had discriminated against both groups of students. The court of appeals, after reviewing the record, including evidence of hostility to hispanics as well as blacks, concluded that "[i]n all the circumstances, it would have been error for the district court to omit hispanics from the minority category in its analysis of whether the Yonkers public school system was segregated" (Pet. App. 684a).[11] This Court need not

[11] The Board criticizes the grouping of Asians with whites and hispanics with blacks as "purely arbitrary and unwarranted" (87-1632

"undertake to review [the] concurrent findings of fact by two courts below." *Graver Mfg.* v. *Linde Co.*, 336 U.S. 271, 275 (1949).

2. The City contends (87-1686 Pet. 11-18) that the courts below held it liable for the segregation of the Yonkers public school system solely on the basis of the City's discriminatory site selection in public housing and the mayor's appointments to the school board. The City's argument is groundless. The courts below held the City liable for causing systemwide segregation of its school system on the basis of factual findings that city officials intentionally discriminated against minorities in choosing sites for public and subsidized housing, in part to prevent minorities from attending school in white neighborhoods; appointed to the school board individuals who would support a policy of avoiding desegregation; and tried to influence school board decisions in order to maintain the status quo.

a. Contrary to the City's suggestion, the record contains substantial evidence that city officials "made public housing site evaluation decisions for other than housing reasons" (87-1686 Pet. 12).[12] One former City Council

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Pet. 23). But the record contained no evidence of discrimination against Asians in the Yonkers school system. The district court and the court of appeals thus properly followed *Keyes* to include as minorities only those groups that had been victims of discrimination.

[12] The City may not complain that the courts below imposed liability solely because of its discriminatory housing practices. The district court eschewed reliance on a theory that "a city's discriminatory housing practices *alone* form an independent basis for a finding of city liability for school segregation" (Pet. App. 513a-514a (emphasis in original)). The court proceeded on the basis that the (*id.* at 514a)

> housing-related practices of City authorities, along with the various other methods by which City officials have influenced school district operations and thereby contributed to its racial

member testified that during his seven-year tenure on the Council nearly every Council member suggested that he was concerned about the racial makeup of schools when considering sites for public and subsidized housing (Pet. App. 433a, 701a).[13] City officials' attempts to influence school board decisions having a direct bearing on the racial enrollment patterns of the schools (*id.* at 465a-467a, 515a, 701a) not only showed the "City's awareness of the interrelationship between residential housing choices and the racial imbalance of the schools," but also provided "additional evidence of the City's segregative intent with respect to public schools" (*id.* at 467a).

The City cannot find a safe harbor in the Board's overall responsiblity for the school system because, as the district court found, the City itself "engage[d] in intentionally segregative conduct with respect to these schools" (Pet. App. 514a). For example, the City's direct involvement in the planning of School 10 rendered it liable for "the segregation of School 10 and surrounding schools" (*id.* at 516a; see *id.* at 239a-253a).[14] Indeed, the Board could not

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segregation, are all relevant in determining whether the City's acts and omissions as a whole have resulted in the intentional creation or aggravation of racial segregation in the Yonkers public schools.

[13] The former Council member explained that the City's housing segregation was designed in part to keep East Yonkers schools "nice" by excluding minority-occupied low-income housing (Tr. 986).

[14] The Board planned School 10 as a replacement for the physically inadequate facility of School 19 in Southwest Yonkers. The City persuaded the Board to locate the new school in the Riverview urban renewal area for reasons advantageous to both the City and the Board. The City, however, became increasingly involved in the planning and construction of the school and ultimately drastically reduced its site size and surrounded it with subsidized housing projects so that the school was barely visible from the street. These actions "under-

be held responsible for the segregated opening of School 10 because the Board had assumed a "subsidiary role in the decisionmaking process" in favor of the "predominance of the City's residential objectives" (*id.* at 252a). Thus, "the City's conduct with respect to [the] Riverview [housing projects] and School 10 [could] be viewed properly only as part of prior, contemporaneous, and subsequent housing practices which intentionally preserved racial segregation throughout the City as a whole" (*id.* at 516a).

b. The courts below properly relied on the "mayor's appointments to the Board of only persons who could be counted on to maintain segregation in the schools" (Pet. App. 704a) to support holding the City liable for intentionally causing segregated schools. The City's argument (87-1686 Pet. 15-17) that the lower courts imposed liability under a theory of vicarious liability, despite *Monell* v. *New York City Dep't of Social Services,* 436 U.S. 658 (1978), mispresents the decisions below. The City was not held liable for the manner in which the appointees exercised their authority once in office or on the ground that their conduct was "for[e]seeable" (87-1686 Pet. 16). The lower courts held the City liable on account of city officials' intent to "preserve segregation in the schools, both for the sake of the schools and for the sake of the neighborhoods" (Pet. App. 702a), an intent exemplified by the "mayor's forthright packing of the Board" (*id.* at 701a) with the persons he believed would reject proposed desegregative alternatives.

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mined" (Pet. App. 247a) School 10's potential for attracting students and required the Board to abandon its plans for closing School 19. School 10 and School 19 were, by 1976, two of the most predominantly minority schools in Yonkers (*id.* at 239a-252a).

Contrary to the City's contention (87-1686 Pet. 18), the examination of mayoral appointments as a means of ascertaining city officials' intent is not "judicial oversight of discretionary appointments" of the sort this Court discouraged in *Mayor* v. *Educational Equality League*, 415 U.S. 605, 615 (1974). As the court of appeals stated, this Court has not "forbid[den] judicial recognition of the pattern in which municipal discretion is exercised in order to fathom the municipality's underlying intent" (Pet. App. 704a). Indeed, as this Court has repeatedly recognized, litigation under the Equal Protection Clause necessarily requires an inquiry into the actions taken by state actors. *E.g.*, *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 264-268 (1977).[15]

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[15] The City also argues (87-1686 Pet. 18-22) that the lower courts improperly required the City to disprove the need for allegedly unnecessary elements of the voluntary desegregation remedy. The City neglects to mention that it chose not to participate substantively in the school remedy proceedings before the district court (Pet. App. 533a-534a, 658a, 713a). The City raised its belated claim that the Board's proposed desegregation budget was excessive only after the district court had completed the proceedings and had entered a remedial order (*id.* at 658a; 87-1686 Pet. App. 763a-764a). The court, having already found that the budget was "reasonable and necessary" to the plan's implementation (87-1686 Pet. App. 763a), nevertheless invited the City to produce evidence that would show whether any aspect of the budget was unnecessary or duplicative. The City and the Board, however, resolved their funding dispute by consent (87-1686 Pet. 7-8 n.5), and thus the court was not required to resolve it. Under these circumstances the issue the City raises before this Court is not presented by the record.

The only funding dispute remaining among the parties, which involves the City's obligation to fund two new schools, is currently pending in the Second Circuit. *United States* v. *Yonkers Bd. of Educ. & City of Yonkers*, Nos. 87-6070 and 88-6078 (appellee's brief filed May 9, 1988).

3. The City also contends (87-1686 Pet. 23-29) that the courts below erred in holding the City liable for segregated housing "based on the expressed opposition of members of the community, and not public officials, to placement of low income housing on the East side of Yonkers" (*id.* at 23). The district court found intentional discrimination based not only on the City's yielding to the community's race-based opposition to public and subsidized housing outside Southwest Yonkers, but also on the City's consistent series of housing site decisions explainable only in terms of race, a pattern of specific departures from ordinary procedures compatible with that discriminatory policy, and a string of pretextual justifications for the City's actions (Pet. App. 172a-187a). Similarly, the court of appeals made clear (*id.* at 674a-682a) that it relied on the City's deference to the community's racial animus because the court found that "a discriminatory purpose [was] a motivating factor" in the City's decision-making process (*Village of Arlington Heights*, 429 U.S. at 265-266). The lower courts' straightforward and entirely correct applications of this Court's precedents warrant no further review.

The City also contends that the district court made "no findings that any municipal official [had] intentionally discriminated" (87-1686 Pet. 27). As the court of appeals recognized, however, the "City's view of the facts and the findings [of the district court] is untenable, for it is plainly contradicted by the district court's well documented opinion" (Pet. App. 675a). The district court found that certain city officials had acted out of a belief that "racially influenced opposition to subsidized housing in East Yonkers [was] a 'fact of life' " (*id.* at 64a), and that they therefore had decided to concentrate building such housing in pre-

dominantly minority areas of Yonkers (*ibid.*).[16] Moreover, the district court had found that "numerous City officials not only responded to, but * * * 'led the fight against subsidized housing in East Yonkers' " (*id.* at 181a). In sum, the record amply supports holding the City liable for engaging in a continuous pattern of intentional discrimination in its housing policies in violation of the Fourteenth Amendment and the Fair Housing Act.

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[16] During the 30-year period examined by the district court, every site the City selected for low-income family housing was in the Southwest, adjacent to census tract 7, or heavily minority Ranyon Heights (Pet. App. 12a-14a). Indeed, the court specifically rejected as pretextual the City's defense that its site selection policy was part of a comprehensive development plan (*id.* at 105a-117a, 118a-130a, 179a-185a). In addition, the City consistently approved unsuitable sites in the Southwest for public housing while rejecting sites in the East and Northwest (*id.* at 100a-103a). The City also took whatever actions were necessary to spur development of low-income housing in the Southwest but stifled building plans east of the Saw Mill River Parkway (*id.* at 102a-106a, 147a-149a, 150a, 151a-162a).

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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